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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1245

IN RE LORING J. WHITESIDE,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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ADDITIONAL DOCUMENTS PROVIDED FOR USE OF COURT

9 printed copies of Brief & Appendix filed below.
9 printed copies of Petition for Rehearing in banc in Court below.
9 Xerox copies of 11 page MOTION TO QUASH filed March 20,1967 in District Court, including its own 38 page APPENDIX, for such use as Court may wish.

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October Term 1967

No.

IN RE LORING J. WHITESIDE,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Loring J. Whiteside, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Second Circuit entered on November 28,1967, affirming the disbarment of Petitioner from practice in the Federal District Court of the District of Connecticut as ordered by District Judge M.Joseph Blumenfeld on June 20,1967, followed by denial without comment on July 12, 1967 of motion to vacate and set aside said judgment of disbarment.

OPINIONS BELOW

The PER CURIAM opinion of the Court below is reported in 386 F.2d 805 and is reproduced in the APPENDIX, infra, page AP-1. The denials of Rehearing in banc will be

found infra on page AP-3. The opinion of District Judge Blumenfeld will be found on pages A-8 to A-10 in the printed brief and appendix of the Court below, of which 9 copies have been filed for the use of this Court. Likewise 9 copies of the printed Petition for REHEARING in banc filed December 12, 1967 have been filed for the use of this Court, as have also 9 Xerox copies of an 11 page MOTION TO QUASH with its own 38 page APPENDIX as filed in District Court on March 20, 1967. All of the rulings and opinions of Judge Blumenfeld in the District Court will be found on pages A-1 to A-10 in the Appeals Court Appendix.

JURISDICTION

The judgment of affirmance of the Court below was entered on November 28,1967. A timely petition for rehearing in banc was filed December 12,1967 and denied December 21,1967. The jurisdiction of this Court is invoked under 28 U.S.C.1254 (1), 28 U.S.C.2101 (c), and Rule 22 (3) of this Court.

QUESTIONS PRESENTED FOR REVIEW

I. Can CANONS OF ETHICS 1 and 32 be invoked in the State of Connecticut to protect State Judges who have acted without jurisdiction ?

II. Is it an invasion of an attorney's First Amendment right to freedom of speech to subject him to sanctions of any kind for performing his duty in a respectful manner involving a group of State Judges who have wronged his clients ?

III. Is it an invasion of his right to due process for a Federal District Judge to declare he will rule on no more motions of an attorney whom he seeks to disbar ?

IV. Is it an invasion of his constitutional right to due process for a Federal Judge to rule that the Federal Rules of Civil Procedure are not applicable to disbarment proceedings without providing a substitute ?

V. Is it an abuse of discretion for any Federal Judge to base a judgment of disbarment, or an affirmance of same, upon a perfectly obvious falsehood ?

CANONS OF PROFESSIONAL OR JUDICIAL ETHICS INVOLVED

CANON 1. It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

CANON 32. No client ..... is entitled to receive nor should any lawyer render any service or advice involving ..... disrespect of the judicial office .....

CANON 29. UPHOLDING THE HONOR OF THE PROFESSION. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

CANON 15. HOW FAR A LAWYER MAY GO IN SUPPORTING A CLIENT'S CAUSE. Nothing operates more certainly to create or to foster popular prejudice against lawyers as

a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause. *******

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability", to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

CANON 36. RETIREMENT FROM JUDICIAL POSITION OR PUBLIC EMPLOYMENT. A lawyer should not accept employment in any matter upon the merits of which he has previously acted in a judicial capacity. A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

CANON 41. DISCOVERY OF IMPOSITION AND DECEPTION. When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it.***

CANON 11 - JUDICIAL ETHICS - UNPROFESSIONAL CONDUCT OF ATTORNEYS AND COUNSEL. A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counsel brought to his atten-

tion; and if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

STATEMENT OF THE CASE

This is a disciplinary proceeding seeking disbarment of the petitioner from practice in the Federal District Court of the District of Connecticut, conceived and publicly set in motion by Chief Judge William H. Timbers as early as September 12,1966 (Appeals Appendix p.A-12), but formally filed on February 1, 1967. It involves no moral turpitude, malice, fraud or dishonesty or misbehavior of any sort or degree on the part of petitioner, and is based solely upon statements made in a federal complaint, No.11,551 concerning 8 State Judges, 7 of whom as individuals were named as defendants in a Civil Case, instituted August 5,1966 by petitioner on behalf of 3 members of the Tkaczyk family against 22 defendants for the enforcement of their 1st and 14th Amendment Amendment Constitutional rights to burial of their daughter's body underground in accordance with her church teachings and religious belief from infancy; and for damages for the wrongful prevention and unprecedented delay of such burial ever since her death on December 5, 1961 up to the present moment. It was thought that the gamut of fraud and concealment of what appears to have been a murder of the 45 year old Tkaczyk daughter by her husband, Kenneth Gallagher, one of the 22 defendants, had been run in State courts, and could be exposed and ended by a jury trial in Federal court under the Civil Rights Act. What has happened in the District Court further to obstruct and delay justice and to extend the evasion of said constitutional rights, and so continue the retention of a dead body in unrefrigerated temporary storage, may be found in pages 1 to 11 of petitioner's brief in the Court below, and does not need to be repeated again here. Likewise the Appendix annexed to that brief contains all of the rulings of District Judge Blumenfeld (pp.1-10); the Order to Show Cause (A-12 to 14); the U.S.Attorney's MEMO (A-14 to 21); the amended Tkaczyk complaint (A-22 to 39);and the ans-

wer and defenses proffered by petitioner (A-40 to 53) to the Order to Show Cause. The pertinent paragraphs in complaint 11,551 relating to judges are 2-A, 2-B, 3, 11, 20 & 21.

Particular attention is directed to the fact that petitioner did not offer any argument or evidence at the hearing conducted by Judge Blumenfeld on June 20, 1967 as will be noticed from the transcript of that occasion on page A-54 to 55 in Appendix below. This was for a two-fold reason. First, because there was such an abundance of evidence filed in court and accepted by Judge Blumenfeld with the QUASH MOTION on April 3rd, there was no need of presenting any more and certainly it should not be necessary to present all over again the huge amount of documentary evidence already in the file. Secondly. The FIFTH AFFIRMATIVE DEFENSE (A-44 to A-49) clearly enunciated petitioner's position that the Judge was acting without jurisdiction and had utterly disqualified himself by his rulings, so that the only thing to be accomplished by participating in the hearing would be to waive the constitutional rights the Judge had violated so completely, and that the petitioner did not care to do.

The first 11 pages of the brief below emphasize the abundance of the evidence presented and accepted on April 3rd, the mammoth falsehood about the total dearth of evidence set up in the opinion as a basis for disbarment, the judicial concealment of murder facts and how Judge Coles aided and abetted DeAndrade's criminal acts. Now we will consider a new subject:

JUDICIAL IRREVERENCE FOR ETHICS

As will be seen later on in this petition, one of the big problems faced by the American Bar Association is how to overcome judicial irreverence for ethics in their own behavior. This case affords some brilliant illustrations of this problem..

When the 5 State Supreme Court Justices were confronted on December 26,1963 with a Motion for action under CANON 11 to whichwas annexed 8 pages of facts in

the RECORD (of Appeal #5427) ESTABLISHING KENNETH GALLAGHER AS THE MURDERER OF HIS WIFE, OLGA (pp. AP 15-25 of Quash Appendix), the motion was never scheduled for a hearing and was held until January 23, 1964 when the Tkaczyks received notice from the Court Clerk (AP 26) that the motion had been dismissed for lack of jurisdiction, and after deletion of the MURDER part of the title, it was announced as dismissed in 151 Conn. 734. This action not only concealed the murder facts but put them in the waste basket. And the mandatory obligation of all 5 Justices under CANON 11 of Judicial Ethics to send the matter at once to the proper investigating and disciplinary authorities was also consigned to the waste basket. Five Justices working together thus to conceal instead of reporting it for investigation to the proper authorities, provides all the evidence needed of a conspiracy to conceal murder facts.

Judge Coles did almost exactly the same thing as regards his mandatory duty under CANON 11 which shows up clearly in the Appeals Appendix (A-58 to A-60), only he was hiding DeAndrade's felonies and threatened to use the power of the State to impound the evidence and put it under lock and key; which surely indicated his participation in the conspiracy to protect DeAndrade, by becoming an accessory after the fact. See p. 18 infra.

These few instances indicate that CANON 11 of Judicial Ethics is a dead letter in Connecticut. But Coles broke another vital CANON in August 1966 when he became the very first lawyer to put in an appearance for the 5 Justices of the State Supreme Court who were made individual defendants in the Tkaczyk civil action #11,551. This is in direct violation of CANON 36 which is set forth on page 4, supra. forbidding employment in connection with any matter a lawyer has investigated or passed upon while holding public office or being in public employ. And the sad thing about it is that he was thus unethically employed by the same 5 Supreme Court Justices who are shown in paragraphs 2-A and 20 of complaint 11,551 to have acted <u>without jurisdiction</u>

and in the commission of extrinsic fraud. This is another proof of conspiracy and collusion to violate CANON 36, and made it obligatory upon petitioner to file Motion of June 30,1967 for initiation of disciplinary proceedings against former Judge Albert L.Coles and defendants King, Murphy, Alcorn, House and Ryan for violations of CANONS 36 & 11 (Brief below p.11).

The moment Chief Judge Timbers had brought to his attention in August 1966 the unprofessional conduct of the 5 State Supreme Court Justices and of Albert Coles and defendant DeAndrade, as disclosed by virtue of the verified complaint 11,551, it was his bounden duty to refer the various charges at once to the proper investigating and disciplinary authorities under CANON 11, particularly as soon as he had diagnosed the overt acts as criminal conduct. The very least he could have done was to permit the 3 plaintiffs to proceed to trial and given them full opportunity to prove their charges before a jury. Instead of that he has given every indication of becoming a conspirator with the 8 State Judges to continue the conspiracy of concealment of the murder facts and of the evasion of the constitutional rights to immediate underground burial.

It should be noticed that CANON 41 (p.4 supra) requires the petitioner to "endeavor to rectify" the giant falsehood pronounced by Judge Blumenfeld (p.A-9 of Appendix below) and referred to on pages 8 & 9 of Brief below, where are listed 3 of his motions for rectification, reformation, and action by the U.S.Attorney. This does not pretend to be an exhaustive study of the judicial contempt for ETHICAL CANONS in this case, but at least enough to establish judicial irreverence for them in the highest places.

TACTICS FORCED UPON U.S.ATTORNEY ,

The attention of the Court is directed to the oral statement (infra p.AP-10 to 11) made to the Appeals Court below on November 22,1967 which served a dual purpose of doubling as a REPLY BRIEF as well as Oral Argument. Spread out there is a list of 7 acts of Judge Coles, clearly shown in the transcript of hear-

ing before him (A-58 to A-60) which had to be ignored and virtually denied by the U.S.Attorney in order to obey Judge Timbers' insistence upon a breach of ethics case against petitioner, who is convinced he would never have resorted to such tactics had not Chief Judge Timbers made it compulsive. See par.2,p.A-43 of Appendix below for further details.

MISLEADING OR FALSE STATEMENTS IN THE PER CURIAM

1.About the middle of the first paragraph(AP-1 infra) it is stated that "With two minor exceptions he (petitioner) did not practice law after he moved to Connecticut in 1921." One exception may quite properly be considered "minor", which involved Probate matters, Trust matters, corporation matters, real estate matters, building matters and collection matters handled by the petitioner for himself and family, always, however, calling in some other attorney when court action was desired by a collection client.

The other exception, however, could not possibly be termed a "minor" one. It was major in every sense and began November 28,1958 when petitioner filed a writ of error in the State Supreme Court involving the felonious misbehavior of a City Court Judge, arising out of the publication in a weekly newspaper edited and published by the petitioner, of the names, history and behavior of the top-level heads of ORGANIZED CRIME in the state; and by April 1961 his activity in State and Federal Courts had become a deluge of activity which to the utmost strained him to keep abreast of deadlines in the Rules of practice, occupying fully 75% of his working hours and often times in excess of 100% of a ten hour day, of which many hundreds of hours were used each year for research in law libraries and the building up of his own library. It included the preparation and argument of a wide variety of motion papers and appeals, legal memos and briefs, which frequently required work far into the night. Thus he has had 7 years of intensive practice in state and federal courts since April 1961, and 2½ years part time practice immediately preceding that, back to November 1958,which

can be verified in part by reference to 148 Conn.77 & 208, 151 Conn.723 & 725; Conn.Supreme Court Records & Briefs Vol.A-394,pp.248-363; and Vol.A-449, Part 2,pp. 305-402; also 368 U.S.830; 372 U.S.966; 381 U.S.903;& 386 U.S.1013; also 309 F.2d 322.

2. Towards the end of the first paragraph of the PER CURIAM (AP-2 infra) two typical allegations in Complaint 11,551 are quoted, one respecting a conspiracy to conceal the murder, and the other about a Judge aiding and abetting DeAndrade in attempted subornation of perjury, etc. Both of these assertions were proved by the 38 pages of documents in the QUASH APPENDIX and the 3 EXHIBITS accepted as evidence by Judge Blumenfeld on April 3rd, and were based not only on the public record of their actions but also on transcripts of the various Judges' sayings and behavior in Court as well as letters and one telegram passing to and fro between the various parties and the judges. Proof was thus not confined to judicial action alone, as can well be seen from the evidence presented. Seven very serious frauds were committed by Chief Justice King and his fellow Justices as are related in par.15, page 5, of the QUASH MOTION, 9 copies of which with its 38 page Appendix are available for use of this Court. The documents also reveal how the 5 Justices in the State Supreme Court, acting without jurisdiction, assigned a false reason for dismissal, thus defrauding the impoverished plaintiffs out of a hearing on their powerful case and then gypped them on the subject of a stay of cremation which kept them weeping, distraught and on the anxious seat day and night for 30 days until they found a new Connecticut lawyer who obtained from Superior Court Judge Thim a temporary injunction against cremation pending an action in equity for a permanent injunction. While all the time the 5 Supreme Court Justices knew an automatic stay of cremation was in force as a result of secret instructions they had issued to Clerk Horwitz to withhold entry of judgment for dismissal, openly announced but secretly withheld from entry as disclosed by two letters from Clerk Horwitz of which xerox copies are shown on p.AP 35 in the QUASH APPENDIX. The judicial brutality disclosed in this entire transaction is the equal of many wartime atrocities. And all 5 Justices gave their as-

sent to this massacre of Constitutional rights and his merciless treatment of a long suffering family whose battle for the right to observe the requirements of their religious teaching and beliefs will go down in history as a blot on the legal profession of this state and its maladministration of justice.

3. The second paragraph of the PER CURIAM speaks of "the conceded absence of any facts" (AP-2) to substantiate this horror stricken behavior of the 5 State Supreme Court Justices recited in the preceding paragraph. That one word "conceded" is, indeed, a humorous touch. Whoever wrote the PER CURIAM deserves a medal of some sort for peddling a giant falsehood in so sly and indirect a manner. If the panel of Appeals Judges read the second half of page 8 and page 9 of petitioner's brief, they did not digest it, or perhaps did not care to. At any rate they adopted Judge Blumenfeld's gargantuan falsehood in toto (middle of p.A-9 of brief below) and added the "conceded" whopper to it, both of which are annihilated by the 11 page MOTION TO QUASH and its APPENDIX with the 3 EXHIBITS. Important excerpts from Exhibit A are to be found on pages A-56 & A-57 and on pages A-58 to 60 will be found those from Exhibit B. Exhibit C is contained in the original record already certified and mailed to Clerk Davis.

4. It is childish for any adult person to speak of the allegations in Complaint 11,551 as being "grossly disrespectful" when the Justices themselves were so grossly fraudulent as pointed out in the verified complaint and again in par.15,page 5, of the QUASH MOTION and in par.2 supra. And to speak of them as "totally unfounded" or "wholly unsupported" is of value only in a comedy skit ridiculing follies of the bench. Reason is debased, truth is destroyed, justice is a mockery, black is made white, and the CANONS of ETHICS are converted into weapons of war to destroy the honor of and reverence for a great and vitally important profession.

THE QUESTION WHICH MOST NATURALLY COMES TO MIND

Why would Judge Blumenfeld risk his own reputation, endanger his career as a jurist and besmirch his

own record by fabricating an obvious falsehood upon which to base petitioner's disbarment ? Does he not have everything to lose and nothing worth-while to gain?

This Court is now referred for the answer to District Judge Robert C.Zampano, the youngest of the 4 District Judges assigned to the District of Connecticut. The moment he had finished reading the original Complaint #11,551, which he first saw on August 8,1966,he indicated that he had so many intimate friends among the 22 defendants that he would have to disqualify himself and would not sign any papers whatsoever pertaining to the case; not even an Order to Show Cause, a temporary restraining order or an authorization for disinterested persons to make service. Judge Clarie grudgingly came to the rescue in part but hunted for a way to ease up on the 5 State Supreme Court Justices even before he could digest the facts set forth in the complaint. Then Chief Judge Timbers entered the picture on September 12,1966 with some solution which allayed the consternation of the eleven counsel present at a hearing which was so promising that it caused the chief murder suspect to dance a jig at recess right in the court room after his counsel had communicated to him some secret message, and to cap the climax Judge Timbers threatened petitioner with disciplinary proceedings and piled up what proved to be 6 falsehoods upon which to base a finding of lack of jurisdiction byreason of the alleged absence of a substantial federal question. All of this material was incorporated in two affidavits for disqualification of all 3 Judges as soon as it was announced that a disbarment hearing was to be held on March 6 before all 4 of the District Judges sitting en banc. Immediately Judges Timbers, Clarie and Zampano withdrew from the en banc arrangement leaving Blumenfeld alone to do the job. It was a heavy responsibility to be laid on the shoulders of one judge. He stumbled and fell several times but always picked himself up only to stumble and fall again, for the load of hiding the treachery and fraud of the 8 State Judges was far too big to be carried by one Federal Judge. Paragraph 9 in the printed Petition for rehearing in banc before the Court of Appeals, summarizes the basic problem facing both State and Federal judges at all levels-

and that is WHAT IS THE BEST POLICY TO FOLLOW FOR UPHOLDING THE HONOR OF THE PROFESSION ? The American Bar Association has already spoken on this outstanding problem by giving us CANONS 15 & 29 (p.3 & 4 supra) to which petitioner owes his allegiance and support without "fear of judicial disfavor."

The very best evidence of the effectiveness and truth contained in Complaint 11,551 with respect to the 8 state judges is the desperation exhibited by both state and federal judges to prevent a hearing on the merits, and to make it appear there is no possible foundation for the true facts therein stated. The voluminous evidence presented on April 3, 1967 by the petitioner provides a complete bar to the maintenance of the untenable position taken by Judge Blumenfeld & by the panel of 3 Judges in the Appeals Court with 6 more Appeals Judges declining to rectify the error of their 3 unfortunate comrades.

THE SECRET CODE OF HONOR AMONG JUDGES TO PROTECT THEMSELVES

The promulgation and enforcement of the CANONS OF ETHICS for both lawyers and judges is one of the very best activities of the American Bar Association. It is calculated to advance the cause of justice and truth in the best traditions of the profession and even parallels the goals of Holy Writ. But in this case the CANONS are being used to obstruct justice and truth and to support what appears to be a secret code of honor among judges to protect each other from exposure of fraud or corruption at whatever the cost may be even if it becomes necessary to resort to perjury. Such a CODE OF HONOR is bound to wreck the profession unless the highest Court in the land sees fit to end such behavior immediately, and it would be difficult to find a cleaner cut case with which to begin than right now with this case of escalation with the falsehoods and perjury increasing each step of the way as the corruption rises from Court to Court.

A R G U M E N T

Judge J. Warren Madden of the U.S.Court of Claims in Washington, D.C. published in March 1952 an article entitled "Is Justice Blind?" in Vol.280,page 60,of the ANNALS of the American Academy of Political & Social Science, in which he said:

"It is probable that in the occasional case when a judge is dishonest, the dishonesty is not investigated and exposed as promptly as it would be in the case of other kinds of public officers, or of private persons. There is a customary respect, amounting almost to obsequiousness, in the attitude of lawyers toward judges, which makes a lawyer slow to suspect wrongdoing on their part, and slow to believe that any accusation which he might make would persuade his brother lawyers and the prosecuting authorities. If the judge is dishonest, as the lawyer may suspect, an accusation which did not result in his removal from the bench, would put the lawyer in the position where no one would hire him, for fear of the prejudice which the judge would naturally harbor against him. So it is probable that the occasional dishonest judge does not get his just deserts until his conduct has become quite intolerable. Some system should be devised whereby prompt investigations would be made by lawyers from other communities, or officers who are not dependent upon the accused judge for a living, when there is any substantial reason to doubt a judge's integrity."

The fact that petitioner has reached that time in life when his retirement income is amply able to take care of his needs, renders him immune to the dangers and deterrents of which Judge Madden speaks above. Moreover the secret code of honor among judges spoken of on the preceding page is repudiated by a select few of them such as Arthur Vanderbilt of New Jersey and the members of this Court in 1952 when they spoke by Mr. Justice Jackson in the disbarment case of Sacher v.U.S.,343 U.S.1 at pages 13-14 as follows:

"But that there may be no misunderstanding, we make clear that this Court, if its aid be needed, will unhesitatingly protect counsel in fearless,vigorous

and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever."

Also in 1952 there was published a 247 page volume entitled "CONDUCT OF JUDGES AND LAWYERS" authored by Chief Judge Orie L. Phillips of the U.S. Court of Appeals, 10th Circuit, and Judge Philbrick McCoy of the Superior Court of California. both of whom were members of the American Bar Association Committee of Experts of the Survey of the Legal Profession, relating to Ethics, Discipline & Disbarment. This volume contains the official report of this special survey Committee on a very vital subject. Because of their pertinence to the issues in this proceeding, the following quotations are selected from the pages indicated:

(p.151) "Disregard of the CANONS is said to be "flagrant" in too many particulars **** Somehow the political pressures which seem to motivate most of the judges who depart from the requirements of the CANONS must be removed. **** The survey shows the imperative need for improvement in the matter of judicial conduct.

(p.212) "there is evidence of laxness in the discipline or removal of judges in proper cases. To some extent at least this is attributable to fear - fear on the part of lawyers with knowledge of the facts of a given case that an unsuccessful investigation or prosecution will bring retaliation from the judge. **** (p.213) "It can hardly be disputed that a judge who fails in any manner to recognize this obligation of the Bar is not worth his salt; nor is there any question that a judge who would retaliate in the event of an unsuccessful investigation or prosecution is not fit to occupy his office."

(p.153) "The challenge to lawyers is quite obvious. The judge may help a great deal, but the real impetus for reforms in this field must come from the lawyers. The lawyers must meet that challenge if they are worthy of their calling."

(p.144) "Our correspondent in that state (Michigan) adds that disciplinary proceedings under these rules have not been satisfactory for the obvious reasons

"that the members of the Grievance Committees, being practicing lawyers, are hesitant to present and try charges against their judges."

Suggested remedies start in the last line on page 151 as follows:

"Reform in the methods of selection of judges in order to remove them from political pressure ****** through the force of enlightened public opinion,*** The responsibility for enlightened public opinion lies not only with the Bar, but with the Bench as well, whose members too often display the lack of a proper sense of individual responsibility as leaders of public opinion. Too often, as Arthur Vanderbilt says, with respect to improvement in our procedures, 'every step that is taken to obtain a more effective administration of justice involves a battle with the existing order and with those who support it.' Generally they are in an entrenched position, and whether motivated by selfish interests or by mere inertia, they make formidable opponents."

Chief Judge Phillips concludes (p.152):

"When all the members of the Bar and of the Bench assume their full responsibilities as leaders of public opinion, the desired end will be attained. That end is well expressed by John W. Davis ***:

'While we are hoping for peace and praying, somewhat vainly, I fear, for easy taxes, let us lawyers and laymen alike see to it that we have an administration of justice not merely tolerable but approaching in purity and wisdom as near to the standard of the divine as feeble human nature can attain.'

Phillips continues:

"One road to the desired end is clearly signposted in Miller's concluding observations:

'It is our considered judgment that the remedy for the complaints now made against judges lies, not in a reform of methods of discipline of judges, but rather in reforms along the line of supervising the work of judges. In this field the complaints appear to be well grounded."

Note: This last reference to Miller relates to an ex-

cellent 3 page article in 50 Mich.Law Rev.737 (1952) by Frederick M.Miller under the title "Discipline of Judges."

DEDUCTIONS JUSTIFIED BY FOREGOING AUTHORITIES

1. The complaint #11,551 filed by petitioner in 1966 is exactly the kind of complaint which the AMERICAN BAR ASSOCIATION insists should be filed particularly as pertaining to the 8 or more judges, because "the real impetus for reforms in this field must come primarily from the lawyers"*** "if they are to be worthy of their calling."

2. Every word of the entire 12 pages of complaint is verified truth, told with startling precision and fearless accuracy, as may be observed from pages A-22 to A-39 in Appeals Appendix where it is set forth complete except for two Exhibits A & B attached to original.

3. Petitioner's only mistake was his failure to comply fully with the recommendation of the American Bar Association quoted above which would call for giving prominence to the criminal aspects of the action of the State Judges as well as their civil liability to the 3 plaintiffs.

4. Contrast, if you will, what the Chief Judge of the Court of Appeals of the 10th Circuit (Phillips) recommends as the duty of a worthy lawyer, and the behavior of his counterpart in the 2nd Circuit (Lumbard) who adopts as his own a falsehood invented by and incorporated in his written opinion by Judge Blumenfeld

5. Contrast also what Chief Judge Lumbard says to law students in Minnesota (AP-7 infra) about "the Federal Courts listening", and then demonstrates by his conduct in this case that they DON'T LISTEN, as pointed out in the printed Petition for Rehearing in banc of which 9 copies are available for this Court.

6. Compare what former Chief Justice arthur Vanderbilt of New Jersey says on the preceding page about

the obtaining of a more effective administration of justice involving a battle with the existing order, with the full fledged battle which has developed with the forces of evil in both District and Circuit courts of the Federal System, which would have been regarded as unbelievable were the evidence right before your eyes not so compulsive. Connecticut is in dire need of judges like Vanderbilt!

7. SUPERVISING THE WORK OF JUDGES is the chief reform recommended by Chief Judge Phillips near the end of page 16 supra. And that is in complete harmony with RULE 19 (b) of this Court in granting the writ of certiorari when a Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

ARE FALSEHOODS EVER JUSTIFIED IN COURT ?

Charles P. Curtis, Jr. of the Boston Bar says they are justified in a few situations which he describes in a fascinating article in 4 Stanford Law Rev. 3(1952). This position was roundly denounced by the famous Philadelphia lawyer, Henry S. Drinker, shortly thereafter at page 349 of the same Review volume. Drinker is an outstanding figure in practical ethics and actually served as one of the members of the American Bar Association Committee from the report of which so many quotations are made supra. If for no other reason than to clear up this one point for all federal Courts in the nation, petitioner seeks an adjudication of the highest Court in the land. Who is right?. Curtis, Jr. or Henry Drinker ? Chief Judge Phillips of the 10th Circuit or Chief Judge Lumbard of the 2nd Circuit ?

THE STATE JUDGE COLES MATTER

A case strangely analogous to the Coles matter is reported on page 145 of the Phillips & McCoy book on CONDUCT OF JUDGES AND LAWYERS as follows:

"North Carolina reports that in 1932 a certain judge was found guilty of being an accessory after the fact

"to an alleged embezzlement and of obliterating, injuring and destroying certain original documents relating to the embezzlement case. Conviction brought disbarment and removal from office."

The transcript on pages A-58 to A-60 in the Appeals Appendix conclusively shows very similar conduct by Judge Coles refusing to receive the evidence of DeAndrade's felonies, threatening to use the power of the State to expunge the evidence, impound it and put it under lock and key, besides rudely interrupting the plaintiffs when they offered the evidence and intimidated them into silence with bull dozer methods which was the outside limit of all Coles could do to aid & abet DeAndrade in his crimes, and rendered Coles under State Statute 54-196 liable to prosecution and punishment as if he were the principal offender. The plaintiffs got Coles' signature on that transcript which renders proof complete that he was an accessory after the fact to the utter confusion of the Appeals Court claim that the Coles allegation is "totally unfounded" in the "conceded absence of any facts." (AP-2 infra) That is a triple falsehood. There is no absence of facts, no absence is conceded, and the Coles statement is totally supported out of his own mouth and under his own signature.

No better authorities in this country are known by the petitioner to justify a reversal of his disbarment judgment than those cited in the preceding pages and the argument could very well cease at this point. It may, however, be of some value to this Court to present a brief discussion of the questions raised for review and listed on pages 2 & 3 supra.

I. CAN CANONS 1 and 32 BE INVOKED IN THE STATE OF CONNECTICUT TO PROTECT STATE JUDGES WHO ACTED WITHOUT JURISDICTION ?

As an introduction to this question there should be read the Third and Fourth Defenses filed with the Answer on June 12,1967 (Appeals Appendix pp.A-42 to A-44) This subject has also been thoroughly covered (a) IN PARS. 2, 4 & 9 of the QUASH MOTION; (b) PARS.4 & 3

of the Summary Judgment motion of May 22, denied May 31 as per ruling on p. A-7 of Appeals Appendix which makes no comment on this point; and (c) in PAR.4 (e) of affidavit supporting motion of June 30 to vacate disbarment judgment, denied July 12 as per ruling on p.A-10, again without comment.

The following authorities attest to the loss of judicial immunity for lack of jurisdiction:

Allen v.Gray,11 Conn.95,102 (1836) ANNOTATIONS:
Tracy v.Williams, 4 Conn.Rep.113 56 A.L.R. 1247
McVeigh v.Ripley,77 Conn.136 (1905) 173 A.L.R.808-18
Church v.Peerne, 75 Conn.350 (1903)
Holcomb v.Cornish,8 Conn.375,381
Bradley v.Fisher,80 U.S.335,351 (1871)
Aetna Ins.Co.v.Blumenthal,10 Conn.Sup.436 (1942)
Same: 129 Conn.545 (1943)
Ambler v.Church,1 Root (Conn.) 211
Bauers v.Heisel,361 Fed 2d 581,591 (1966-C.A.3)
Pierson v.Ray,385 U.S. ? (1967)

Since all judges who act without jurisdiction in the State of Connecticut are divested of any judicial protection attached to their office, there are no possible grounds for assuming that they are protected in any manner by CANONS 1 and 32 of Professional Ethics. This means that the District Court Judges had no possible jurisdiction to maintain any kind of a disciplinary action against the petitioner involving those 7 judges who acted without jurisdiction, for they had stripped themselves of every vestige of judicial immunity. This one point alone administers a solar plexus blow to the jurisdiction of the District Court to initiate or maintain this disciplinary proceeding and requires its instant dismissal.

Nor can jurisdiction be retrieved by the Coles comment in par.20 of the complaint for aiding and abetting DeAndrade. Aside from the truth of this allegation as presented on the preceding pages 18 & 19, further details are to be found in par.9 of the complaint devoted to DeAndrade (p.A-27), WHICH SHOULD HAVE BEEN MORE THAN ENOUGH TO STOP ANY SANE AND SENSIBLE JUDGE FROM TOUCHING THIS PROCEEDING.

II. IS IT AN INVASION OF AN ATTORNEY'S FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH TO SUBJECT HIM TO SANCTIONS OF ANY KIND FOR PERFORMING HIS DUTY IN A RESPECTFUL MANNER INVOLVING A GROUP OF STATE JUDGES WHO HAVE WRONGED HIS CLIENT ?

This question seems to be answered with an emphatic "YES" by the two landmark decisions of this Court in Garrison v.Louisiana,379 U.S.64 (1964) and N.Y.Times v.Sullivan,376 U.S.254-305 (1964) followed more recently by Beckley Newspapers Corp.v.Banks,19 L.ed 2d 290 (1967). All 3 of these cases emphasize Mr. Justice Brennan's assertion (p.272 of 376 U.S.) that

> "Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. **** Criticism of their offical conduct does not lose its constitutional protection because it is effective criticism and hence diminishes official reputations."

Other quotations and comments upon these two 1964 cases will be found in brief below at pages 11 to 16.This same constitutional violation of petitioner's 1st Amendment right to freedom of speech was set up by him in his answer on June 12,1967 as his FIRST AFFIRMATIVE DEFENSE(p.A-41 Appendix below); and was again incorporated in par 4 (d) of his June 30 affirmation in support of motion to vacate disbarment judgment as quoted on p. 15 of brief below. A number of older cases upholding the lawyer's right to freedom of speech respecting judges, with page references to where they may be found are as follows:

Re Hart,104 Minn.88 (1908) (A-46)Re Pryor,18 Kan.72,76
Austin's Case,5 Rawle (Pa.) 205 (A-45) (A-46)
Ex Parte McLeod (D.C.) 120 Fed.130,136 (A-45)
Ex parte Steinman, 95 Pa.220 (A-45 & A-46) (A-52)
RULING CASE LAW, Vol.2, par.184,p.1093 Lawyers' Pub.Co.
State ex rel.v.Circuit Ct.,97 Wis.1,12;72 N.W.193(A-41)
Patterson v.Colorado,205 U.S.454,463 where Court said:

> "When a case is finished courts are subject to the same criticism as other people." (p.15)

Thatcher,v.U.S.,212 Fed.801 (1914) where court says of

a lawyer citizen's freedom of speech relating to a judge's candidacy for re-election:

"His criticism may be as indecent and disrespectful as the facts justify. (p.17)brief below.

III. IS IT AN INVASION OF HIS RIGHT TO DUE PROCESS FOR A FEDERAL DISTRICT JUDGE TO DECLARE HE WILL RULE ON NO MORE MOTIONS OF AN ATTORNEY WHOM HE SEEKS TO DISBAR ?

As may be seen on p. A-7 of the Appendix below, Judge Blumenfeld made this startling announcement on May 31, in his last full paragraph on that page. It was a bombshell and was dropped just at a time when petitioner was preparing two motions, one for dismissal for lack of jurisdiction, the other for the Judge's disqualification, which, if either were denied, he intended to appeal as far as necessary to escape his heavy handed bias and prejudice aroused to boiling point because of his anxiety and sole responsibility to get the 7 State judges out of their very dangerous predicament. Such an appeal should be completed even before answer is filed as a matter of good practice. But he rendered that impossible by scheduling a hearing on the Order to Show Cause for June 20 and clamping down on all motions. His action was a deliberate violation of this Court's decision in Holt v. Virginia, 381 U.S. 131, 136-137 where Mr. Justice Black pointed out that "the right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues." See pages A-47 & A-48 in Appendix below & comment thereon extending to page A-49. This one case, recent and lucid, appears to settle this question in the affirmative and deprives the judge of any further jurisdiction over the proceeding, which petitioner announced forthwith as indicated on p. A-49 beginning at A-47 of Appendix below.

IV. IS IT AN INVASION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS FOR A FEDERAL JUDGE TO RULE THAT THE FEDERAL RULES OF CIVIL PROCEDURE ARE NOT APPLICABLE TO DISBARMENT PROCEEDINGS WITHOUT PROVIDING A SUBSTITUTE ?

Twice Judge Blumenfeld made this ruling: First, on May 31,1967 (p.A-7 in Appendix below) to escape the mandatory part of Rule 12 (b) relating to Summary Judgment, after honoring the first half of the same Rule by accepting 38 pages of documentary evidence plus 3 EXHIBITS which automatically converted a QUASH MOTION into one for Summary Judgment. Second, on October 30 (p.8 of Petition for Rehearing in banc) to escape a mandatory requirement of Rules 62 (d) & 73 (d) that judicial approval of a supersedeas bond, automatically serves as a stay of judgment while under appeal. He expressly honored these 2 rules on Sept.15 and then reversed himself on October 30. By this action he compelled petitioner to abandon the representation of his 3 clients in Civil Case #11,551, contrary to CANONS 15 and 44, and to turn down several other would-be clients who besought him for legal help in their problems. His May 31st ruling was his first step in an attempt to justify his total ignoring of the abundance of truth evidence with respect to the state judges and when called on the carpet for such strange conduct he boldly rushed into the forbidden area of falsehood on June 20 (p.A-9) and denied the very presentation of all this evidence.

As long as this disbarment judgment is on the books of the federal district court in Connecticut, these two rulings constitute a complete bar to due process for the petitioner, and all other disbarment proceedings in Connecticut will suffer from the same handicap, as it is his purpose to pursue whatever remedies are available to him to set aside this disbarment. If these two rulings are to be upheld by this Court, petitioner is entitled to know what rules of procedure govern disbarment proceedings. It will be noticed that the Court below neglected to rule on this point after granting petitioner's motion of Nov.8th for inclusion in that appeal an answer to this RULES question. (See p.AP-4 to AP-6 for motion and p.AP-6 for granting of the motion, infra).

The Federal Rules of Civil Procedure settle this question themselves. Rule 1 says:

"These rules govern *** in all suits of a civil na-

"ture *** with the exceptions stated in Rule 81", and disciplinary proceedings are not listed as exceptions in 81. And the freedom granted to District Courts in RULE 83 must not be "inconsistent with these Rules." Nor is petitioner aware of any amendments having been formulated or filed by a majority of the judges. The case of Coughlan v. U.S.,236 F.2d 927 (9th Circ. 1956) relied upon by the U.S.Attorney to banish the Federal Rules is readily distinguishable because Coughlan,after being convicted of several embezzlements, one of which was for $3950 from a client without any restitution what soever, sought to escape disbarment upon purely technical grounds having no merit. To have permitted him to have a stay pending appeal would have violated the court's duty to protect other clients from a similar fate.

"A disciplinary proceeding is civil rather than criminal in its nature. *** it is governed by the rules applicable to other civil actions."
7 Amer.Juris..2d, Attorneys, par.60, pp.84-85
Wernimont v. State,101 Ark.210; 142 S.W.194,196(1911)
Weeks on Attorneys at Law, par.80
Randall v.Brigham,7 Wall.523
Matter of Chandler,105 Mich.255, 63 N.W.69
Conn. Practice Book, Sec.21

V. IS IT AN ABUSE OF DISCRETION FOR ANY FEDERAL JUDGE TO BASE A JUDGMENT OF DISBARMENT, OR AN AFFIRMANCE OF SAME, UPON A PERFECTLY OBVIOUS FALSEHOOD ?

The manner in which Judge Blumenfeld and the 3 Appeals Judges in the Court below have acted with respect to the previous 4 questions may well be regarded as AN ABUSE OF DISCRETION as well as violations of Constitutional rights. But this present question is even more fundamental to JUSTICE than the Constitution itself;and is the basic requirement of all righteousness in law as well as religion and in all human relationships, even life itself. The STATEMENT OF THE CASE in this petition and in the brief below and all the material already presented in both documents make it unnecessary to relate again the evidence and proof of that MAMMOTH FALSEHOOD fabricated and pronounced by Judge Blumenfeld as print-

ed on page A-9 of the Appendix below. Judge Blumenfeld has been asked for a retraction; his 3 fellow judges have been asked for REFORMATION of it;and the U.S.Attorney has been duly advised of this instance of Perjury, based upon the violation of Blumenfeld's oath when he was admitted to the Connecticut Bar after getting his law degree at Harvard in 1928; all as shown by motions filed in July 1967 and listed on page 9 of brief below, none of which have yet been set for a hearing or acted upon in any way made known to petitioner.

COMPLETE LAWLESSNESS OF THIS PROCEEDING

This proceeding has now been in progress for slightly over one year, ever since Feb.1,1967 and in all that time neither the U.S.Attorney nor any of the judges have been able to present even one case which can justify disbarment in this case. In his MEMO (p. A-20 below) and in his brief below (p.6) the U.S.Attorney cites a total of 9 state cases, not one of which involves judges who have acted without jurisdiction so far as is apparent from the published reports.Hence none of them can be regarded as justifying disbarment in this case. But aside from that, everyone of the 9 involves one or more wrongful acts far beyond the limits of the instant case. Seven of the cases involve merely suspensions of short periods ranging from 60 days to 3 years, with 3 given 6 months each and 2 for 12 months each. These 7 cases involved such behavior as threatening evil consequences if the judges ruled contrary to him; charging judges of being guilty of the blackest and foulest of crimes without specifying what they were, and without proof; yielding to duress in making decisions and assisting others to perpetrate frauds upon various citizens without proof;judge and lawyer hurling obscene and offensive epithets at each other in court room in loud voices and prevented from physical attack upon each other only by intervention of nearby lawyers & officers; scandalous charges in lurid language, which are irrelevant and for which no relief could be granted even if true;that the only way the judges could escape scandalous rumors would be by reinstating his appeal;that the judge stirred up ground-

less litigation to satisfy a malicious instinct and for a share of the proceeds, and variations of such charges usually unaccompanied by the slightest effort to offer proof of their truth. In only 2 cases out of the 9 was disbarment imposed. In one of them (Mains) the lawyer was arrested for perjury and placed under $10,000.bond. Then he was arrested for attempt to abduct and murder the opposing attorney and had to provide another bond, this time for $20,000. When he had no proof to offer, he made a pathetic appeal for mercy on account of his wife and boys. The other disbarment occurred (Meeker) when he declined to present any evidence, withdrew his complaint against state judges and tried to resign before being disbarred.

So the whole proceeding is lawless in the sense of there being no authority whatsoever to support the disbarment viewed from any angle; lawless in the sense that all rules of procedure have been ruled inapplicable and no substitutes provided; lawless in the sense that constitutional rights have been massacred, and a gigantic falsehood fabricated to simulate justification for a judgment rendered void also for lack of jurisdiction. At the present moment the disbarment represents the complete triumph of evil utilizing CANONS OF ETHICS in a manner never intended by the American Bar Association.

C O N C L U S I O N

Upon the foregoing reasoning and authorities it is requested that a writ of certiorari issue for a review of the judgment of disbarment in this case, in the hope and belief that it will be found null and void for lack of jurisdiction as well as for abuse of discretion, the disqualification of Judge Blumenfeld to act as an impartial judge in this proceeding, and for the violation of petitioner's constitutional rights to freedom of speech and to due process.

Respectfully submitted,

Loring J. Whiteside

Dated: March 18,1968
Woodbridge, Conn.

Loring J. Whiteside, Petitioner, pro se
Woodbridge, Connecticut 06525

In re Disciplinary Proceedings against Loring J. WHITESIDE.

No. 187, Docket 31654.

United States Court of Appeals Second Circuit.

Argued Nov. 22, 1967.

Decided Nov. 28, 1967.

Disciplinary proceedings. Appeal by an attorney from order of the United States District Court for the District of Connecticut, M. Joseph Blumenfeld, J., which disbarred attorney from practice before that court. The Court of Appeals held that disrespect by attorney to state judges as shown by the filing of lawsuit in federal court alleging that state trial judges and judges of highest court in state entered into conspiracy to conceal facts concerning alleged murder will warrant disbarment from practice before federal district court when attorney adduced no facts to support his charges.

Affirmed.

1. Attorney and Client ⇐43

Disrespect by attorney to state judges as shown by the filing of lawsuit in federal court alleging that state trial judges and judges of highest court in state entered into conspiracy to conceal facts concerning alleged murder will warrant disbarment from practice before federal district court.

2. Attorney and Client ⇐46

Where attorney adduced no facts to support his complaint that state trial and appellate judges who ruled against his clients were in conspiracy to conceal facts about alleged murder, he exhibited such reckless disregard of the truth that he would not be protected from disciplinary proceedings by any privilege as to the criticism of persons in official positions.

Loring J. Whiteside, pro se.

Jon O. Newman, U. S. Atty. for the District of Connecticut, for appellee.

Before LUMBARD, Chief Judge, and KAUFMAN and FEINBERG, Circuit Judges.

PER CURIAM:

This is an appeal by Loring J. Whiteside from an order of the District Court for the District of Connecticut, Blumenfeld J., disbarring appellant from practice before that Court. In 1913 Mr. Whiteside was admitted to the Bars of the State of New York, the United States District Court for the Southern District of New York, and this Court, but, with two minor exceptions, he did not practice law after he moved to Connecticut in 1921. On February 17, 1964, Mr. Whiteside moved for admission and was admitted to the Bar of the United States District Court for the District of Connecticut in order to represent the plaintiffs in the case of Tkaczyk v. Gallagher et al., D.C., 265 F.Supp. 791.[1] On August 5, 1966 he filed a 12-page complaint in the District Court charging a conspiracy between 22 individuals, comprising in the main lawyers, a state's attorney, a deputy coroner, and various Connecticut judges

1. Appellant had informally advised the Tkaczyks in prior litigation between the parties in the Connecticut courts. The Tkaczyks had attempted to enjoin the husband of their deceased daughter from cremating her body, contending that their religious beliefs required underground burial. In addition, they claimed that he had murdered the deceased.

including all 5 judges of the Connecticut Supreme Court of Errors. The following are typical of the allegations in the complaint which Judge Blumenfeld [2] found grossly disrespectful of the judicial office and for which Whiteside was disbarred: "In numerous instances certain Superior Court Judges, certain State Supreme Court Justices and one certain probate judge entered into the conspiracy to conceal the murder [of the Tkaczyk's daughter] and perform overt acts of their own, attributable in some instances to their desire to protect from exposure the increasing number of prominent attorneys and of the State Judiciary and others who had gradually been sucked in and become involved in the matter * * the transcript disclosed a Superior Court judge aiding and abetting DeAndrade in attempted subornation of perjury and an attempt to extort a ransom under false pretenses."

[1, 2] Mr. Whiteside has stated that the allegations against the state judges were based only on the public record of their actions in connection with the Tkaczyk's lawsuit. He is of the view that by exercising their judicial judgment—separately or collectively—adversely to his clients, they became "conspirators" in concealing the facts concerning the alleged murder. In the conceded absence of any facts tending to show anything more than that the rulings complained of, at worst, might have been erroneous, the district court was justified in finding that these grossly disrespectful allegations, repeatedly made, were so totally unfounded and so clearly in violation of the Canons of Professional Ethics [3] as to justify disbarment.[4]

We do not pass judgment on whether appellant behaved as he did because of his long absence from the law or because of faulty judgment. But it is clear that in addition his conduct in presenting these wholly unsupported charges is such as to put in doubt his ability to exercise the judgment which advocacy requires.

Affirmed.[5]

2. The other 3 judges of the District Court for the District of Connecticut refused to hear the disciplinary proceedings because appellant indicated displeasure with them.

3. Canon 1 of the Canons of Professional Ethics of the American Bar Association provides: "It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. * * *" Canon 32 provides: "No client * * * is entitled to receive, nor should any lawyer render any service or advice involving * * * disrespect of the judicial office * * *."

4. Appellant suggests that the rule of New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), immunizes him from disciplinary proceedings for his misconduct in persisting to make broadside attacks of grossly disrespectful proportions. We need not decide whether the *New York Times* rule applies to disciplinary proceedings against a lawyer for statements made in the course of litigation since, in any event, the allegations made by appellant would not be protected under that rule. The appellant, although given the opportunity to do so, adduced no facts to support his claim that the judges who ruled against his clients were conspiring to conceal the facts concerning an alleged murder. Surely to make such accusations—with no facts to substantiate them—simply because the judges ruled against his clients, exhibits a reckless disregard of the truth which would preclude protection under the rule of *New York Times*.

5. In view of appellant's advanced age and his infrequent practice of law, we would not voice any objection if the district court considered it appropriate to modify its judgment, and suspend the appellant from practice before that Court for a period of time.

PETITION FOR REHEARING IN BANC

This petition was filed in the United States Court of Appeals for the Second Circuit, Docket No. 31654, on December 12, 1967. Nine copies of it in printed form have been supplied for the use of this Court. It was denied without comment in the following manner:

Petition for Rehearing In Banc

Loring J.Whiteside, appellant pro se.

No active circuit judge having requested that a vote be taken on the suggestion that the case be reheard in banc, the same stands denied.

(Signed) J.Edward Lumbard
Chief Judge

December 21, 1967

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PETITION FOR REHEARING

A petition for rehearing having been filed herein by appellant, pro se,

Upon consideration thereof, it is

ORDERED that said petition be and it hereby is denied.

Dated: New York, New York
December 21, 1967

(Signed) J.Edward Lumbard

(Signed) Irving R. Kaufman

(Signed)
Wilfred Feinberg
U.S.C.JJ.

U.S.COURT OF APPEALS - - - - FOR THE SECOND CIRCUIT
In re LORING J. WHITESIDE Docket No.31654

MOTION FOR INCLUSION IN THIS APPEAL AN ANSWER TO THE QUESTION AS TO WHAT RULES OF PROCEDURE GOVERN DISBARMENT PROCEEDINGS

Nov. 8, 1967

The appellant respectfully represents:

1. This question has been brought to the forefront by the action of Judge Blumenfeld on October 30, 1967 seizing jurisdiction which he knew he did not possess and ruling in the face of respondent's protest, that his own signed approval of a perfectly valid supersedeas bond, could not provide a stay of the disbarment judgment he had pronounced, as required by Rules of Civil Procedure 62 (d) & 73 (d), on the ground that "The Federal Rules of Civil Procedure are not applicable to disbarment proceedings." (See p.A-7 near end of page) In this way he sidesteps the assertion in 3 Barron & Holtzoff FEDERAL PRACTICE par.1374,p.461 as follows:

> "The stay (in 62 (d)) issues as a matter of right in cases within the rule, and is effective when the supersedeas is approved by the court, which may be at or after the time of filing the notice of appeal."

2. Judge Blumenfeld does not seem to know himself what rules of procedure govern disbarment proceedings. As will be noted from a reading of the annexed September 14 MOTION FOR JUDICIAL APPROVAL OF SUPERSEDEAS BOND, he clearly indicated his intention of honoring said Rules 62 (d) & 73 (d) for the express purpose of enabling respondent to represent his clients at a hearing scheduled for September 18 before Judge Timbers in Civil Case #11551, and signed his approval of the bond on September 15. Six weeks later he changes his mind and decides Rule 62 (d) does not apply to disbarment proceedings. This vitally affects appellant's duty to his clients under CANONS 15 & 29 of Professional Ethics & renders him impotent to serve them properly and renders imperative early action by the Appeals Court on this point. Once before Judge Blumenfeld honored another Rule, this time 12 (b), on April 3, 1967 by accepting 38 pages of documentary evidence contained in an ap-

pendix to the MOTION TO QUASH, and then threw away the rest of the Rule (A-7) when he was confronted with having violated the mandatory part of the same rule relating to Summary Judgment. His aversion in this case for all rules as expressed in his opinion of May 31 on page A-7 of appellant's Appendix is a prime indication of his bias, prejudice and intolerance in his effort to shield a bevy of 8 State Judges, and other prominent lawyers. And it was in that very same opinion that he permanently disqualified himself as an enemy of due process by announcing that "NO MORE 'MOTIONS' WILL BE RULED UPON."

3. Judge Blumenfeld's banishment of the Federal Rules of Civil Procedure from disbarment proceedings, without substituting any other rules in their place, leaves this a lawless proceeding, before an avowed enemy of due process, who ridicules legal research (A-5) and displays a venom and lack of understanding (A-6) incompatible with a judgeship. Obviously this ruling of Judge Blumenfeld on October 30 is null and void for lack of jurisdiction in him to act, for violation of appellant's constitutional right to due process, and for leaving disbarment proceedings in a state of lawlessness hidden behind such a fog of uncertainty that neither respondent nor judge knows what to do or where to go or when. Even the American Bar Association would crack up if subjected for long to such stresses and strains over its very important and essential CANONS OF ETHICS.

4. This motion consists of an original and 3 copies to each of which is annexed xerox copies of the following motion papers and documents showing filing dates in the District Court, from which may be gleaned the various steps taken by both parties leading up to the necessity of filing this motion at a belated hour, but apparently provision has been made for such emergencies by RULE I9 (a) & (h):

Sep.14. MOTION for Judicial Approval of supersedeas bond. Approval was signed about 2:30 P.M. Sept. 15th by Judge Blumenfeld.....(1 page)

Oct.16. MOTION to vacate approval of supersedeas bond. (1 page)

Oct.23. Respondent's opposition to motion to vacate, with affirmation.....(3 pages)

Oct.30. MOTION for Disqualification of Judge Blumenfeld. Filed before court opened.Read by the Judge before he went on bench.Denied by him at close of hearing after an attempt to evade it.(See p.8 of printed Rehearing Petition)3pp.

Oct.30. EXCERPTS from Transcript of hearing on October 30 (Blumenfeld,J.)(p.8 Rehearing pet.)....1 p.

Nov. 1. Clerk Earle's letter re Judge's Order eliminating stay..... 1 p.

5. Respondent's citations and argument set forth in his 3 page Opposition MEMO annexed hereto as indicated above, appear to be sufficient for the purposes of this Court without more.

WHEREFORE, respondent-appellant requests this Court to include in its consideration of this appeal his opposition to Judge Blumenfeld's ruling of October 30 as indicated above, and to adjudicate the question as to whether or not the Federal Rules of Civil Procedure govern disciplinary proceedings, and if not, what rules do govern, as this is one of the outstanding constitutional questions involved in this case.

(Signed)Loring J. Whiteside
Respondent-Appellant,pro se
Woodbridge, Conn. 06525

November 17,1967

It is hereby ordered that the motion made herein by counsel for the appellant pro-se by notice of motion dated November 8,1967 for leave tc file material additional to brief is granted.

(Signed) J.Edward Lumbard
Circuit Judges

U.S.COURT OF APPEALS - - - - FOR THE SECOND CIRCUIT
In re LORING J. WHITESIDE -- Oral Hearing,Nov.22,1967

STATEMENT OF APPELLANT TO THE COURT

May it please the Court:

Appellant knows of no better way to open his oral argument than to quote what Chief Judge Lumbard said to the graduates of the William Mitchell College of Law, St.Paul, Minnesota, on June 11,1963 as follows:

> "Of course constitutional rights or any other rights are not worth the paper on which they are written unless some lawyer is willing to stand up in a court of law and fight for those rights. Where no lawyer is willing to take action which is unpopular and which may even be very dangerous, it must be said that the asserted right simply does not exist. Whether it be Mississippi or Ramsey County or anywhere else, that is the net result. It is only fair to add that if the courts pay no attention to the lawyer's plea, the right is also nonexistent. In all too many states only the federal courts have listened. *** We seem to have forgotten that ineffective law enforcement leads to disrespect for all law."

It was the willingness of the appellant to stand up in a Federal Court of law and fight for his clients'rights in Civil Case #11,551, which brought down the wrath of the District Court Judges in the District of Connecticut in the form of this disbarment attack upon him.

One of the most interesting parts of the U.S. Attorney's brief is on page 8 where he speaks of "unfounded ** charges" of the appellant, who, he claims, "offered no proof of the truth of the charges." And on page 9 he speaks of "wholly unsupported accusations." No such burden of proof rests upon the appellant under the Garrison & New York Times cases (Brief p.15-16). The burden of proving falsity and malice rests upon the U.S.Attorney, in the sustaining of which he has failed utterly. He has likewise failed to recognize or even deign to notice,that CANONS 29 & 15 of Professional Ethics compelled the appellant to file Com-

plaint #11,551 just as it appears on pages A-22 to A-39, calling for a jury trial of whatever issues of fact might have arisen, had not the Complaint been wrongfully dismissed by reason of 6 judicial mistakes of fact, which when rectified, will restore the case to its rightful position on the docket for answer and trial. By this preposterous procedure of harassment in filing disbarment proceedings on no legitimate basis whatsoever, the District Judges are endeavoring to substitute their own frightfully prejudiced opinions for a jury verdict of disinterested persons, and thereby thwarting justice and due process for the 3 plaintiffs as well as for the 22 defendants.

The folly of even attempting to offer evidence which is not obligatory in any legal sense, is made glaringly apparent by the reception accorded the 38 page APPENDIX and the 3 EXHIBITS, A, B & C, offered and accepted as evidence on April 3,1967 at the hearing before Judge Blumenfeld on the MOTION TO QUASH. The truth evidence was so powerful (pages 4, 5 & 6 in brief) the Judge did not know how to back down gracefully, so he ignored every particle of the evidence in his QUASH opinion (A-1 to A-4); repudiated his mandatory duty under RULE 12 (b) of the Rules of Civil Procedure, and then discarded all of those RULES as being inapplicable to disbarment proceedings, and then permanently disqualified himself as a judge in this proceeding by his May 31st ruling (A-7) that "No more motions will be ruled upon," and wound up on the scrap heap when on June 20 he denied the very existence of the 38 pages and the 3 Exhibits, in the last paragraph of PART I of his opinion (A-9).

The U.S. Attorney makes no attempt to explain or resolve this impossible situation except by saying on p.9 of his brief that :

"Appellant's points II & III are simply attacks upon Judge Blumenfeld for disagreeing with the various positions advanced by appellant during the disbarment proceedings. None is worthy of a response."

What worthy response could he possibly make when the

English language used by the Judge in pronouncing his falsehood was so simple and clear? And when its falsity was called to his attention in the MOTION on June 30 to vacate the judgment of disbarment (triplicate copies of this 9 page motion will be found among those furnished this Court), he made not the slightest effort to correct the impression he had made, but left it to be perpetuated indefinitely by denial of the MOTION on July 12 (A-10) without comment of any kind. No apology, no explanation, no retraction, nothing but unadulterated silence. That question as to his disqualification and as to whether it is an abuse of discretion to utter such a falsehood and to base a disbarment upon it, is a double header now in your hands for decision. It would appear his judgment of disbarment is null and void.

Another closely related question was placed in your hands for decision 2 weeks ago by motion dated November 8 and granted last week by you as a belated addition. Twice Judge Blumenfeld has come out flat-footed and declared "THE FEDERAL RULES OF CIVIL PROCEDURE ARE NOT APPLICABLE TO DISBARMENT PROCEEDINGS." (A-7 & p.5 of transcript of hearing on October 30,1967, of which excerpts in triplicate are in your hands). This appears to be in violation of Secs.1, 81 & 83 of the Rules themselves as is pointed out in Respondent's Opposition filed October 23rd of which 3 copies are in your hands. What your decision may be on this point has a bearing upon the procedure in every district court in the nation and is of particular importance to appellant at the present moment, and possibly for some time to come until the present appeal has run its course. He has a duty to perform for his clients imposed by CANONS 29 & 15 of Professional Ethics. A body has been lying unburied in a temporary unrefrigerated vault for almost 6 years awaiting the outcome of this litigation. It is a state felony under Statute 7-64 to hold a body without burial. but the 22 defendants in Case 11,551 are so powerful that no state judge has so far been found who will issue a warrant for the arrest of the custodian defendant for which application was made last August. It is the duty under the Constitution and Civil Rights Act for the Federal Courts to

come to the rescue of citizens thus deprived of their constitutional rights by the State or its courts. Complaint 11,551 is fully adequate to accomplish justice if accorded its rightful place on the federal docket.

One more brief reference to the disqualification of Judge Blumenfeld will be of help to this panel if the Judges will read the March 15 affidavits of bias which resulted in the voluntary withdrawal of Judges Zampano, Clarie and Timbers from the en banc arrangement first conceived. This is the first motion in the group of 13, fastened together and supplied in triplicate for the use of this Court. Likewise the judicial brutality of Chief Judge Timbers is on exhibition in the March 27th motion for enlargement of time, which comes next in that same group. Pages 18 to 20 of the brief cover the disqualification point.

The extremities to which the U.S. Attorney was forced to go in order to make even a semblance of a showing for this disbarment action is revealed in his paragraph 12 (A-18 & A-19) where he totally ignores the numerous statements of Judge Coles (A-58 to A-60) in which he (a) declines to honor his mandatory duty under CANON 11 of Judicial Ethics to criticize and correct unprofessional conduct of attorneys brought to his attention; (b) rudely and ruthlessly interrupts the plaintiffs when they started to offer proof of the subornation of perjury; (c) fails to recognize their oft repeated emergency need of immediate relief to obtain the burial of their daughter's body, as required by Connecticut law and the federal constitution protecting religious practices; (d) deliberately falsifying in the attempt to mislead and confuse them by saying they already had all the relief they could possibly want; (e) launched upon a tirade of intimidation; (f) tried to bull-doze them into silence on the incontrovertible documentary evidence they had for presentation to him of 2 breaches of professional ethics, one misdemeanor and 3 major felonies of the continuing type; and (g) threatened to use the power of the State to cover up these breaches and violations by expunging the evidence, impounding it and putting it under lock and key, which was just about the limit of everything

he could possibly do to aid and abet attorney DeAndrade in his crimes, and rendered him under State Statute 54-196, liable to be prosecuted and punished as if he were the principal offender. This was all quite evident in the Nov.7,1963appeal of the plaintiffs which included the 7 assignments of error (Nos.23-31) to be found in the QUASH APPENDIX (AP 8-11) of which this Court has triplicate copies, preceded by the Oct.18 Motion for Cease and Desist Order (AP 4-6) and the Julia Cravens letter to Judge Coles of October 30 (Ap 7). So serious did the State Supreme Court regard the appeal and assigned errors of Judge Coles filed on Nov.7,the unanimous Court acted almost immediately to set in motion the printing of an assignment calendar for dismissal of the appeal #5427 on the false grounds of lack of due diligence, of which 2 weeks notice had to be made for the hearing set for December 3rd. The latter of November 25th (AP-12) which the plaintiffs wrote Chief Justice King and the prompt reply by way of his Executive Secretary, John Halloran, on Nov.27th (AP 13), are astounding evidence of the calculated fraud and falsity of the charge of lack of due diligence which was ruthlessly used on Dec.3rd by judgment of dismissal, which was announced (AP 26) but secretly withheld from entry as proved by 2 letters of the clerk (AP 35).

The letter of Julia Cravens of December 10th and the telegram of Dec.15th (AP 14) to Chief JusticeKing read together with the various other documents in the QUASH APPENDIX, reveal and confirm over and over again the truth of the disputed allegations in Complaint 11,551, leaving U.S.Attorney Newman and Judges Blumenfeld and Timbers out on a limb with no place to drop.

Three copies of the QUASH MOTION with its 38 page APPENDIX are in your hands so that this panel may be satisfied with the actual visible evidence specifically admitted by Judge Blumenfeld with the consent of the U.S.Attorney on April 3rd, proving that the statements in Complaint 11,551 concerning State Judges are moderately, respectfully and truthfully stated and could not have been trimmed down without doing an injustice to the plaintiffs. Seven fraudulent acts of

the State Supreme Court Justices are set forth in Par. 15 of the Quash MOTION, and are enough without more to afford a justifiable background and mitigating circumstances for every word complained of in the Complaint. Had appellant omitted any of the allegations, how could he have offered evidence of them at the trial? He would have short changed his clients and endangered their rights. Every word in that complaint was carefully, even prayerfully, analyzed and tested before filing, and held off as long as possible. Nothing can be withdrawn. Not even a word.

After the U.S. Attorney succeeds in relegating the Garrison and New York Times decisions to oblivion by some hair-splitting distinction, he presents on page 6 of his brief 9 state cases which he thinks justifies appellant's disbarment. They have one thing in common. They all involve complaints, or affidavits or briefs or some other written paper filed in a court action. But not one of the judges involved in any of the 9 cases appears to have been acting outside his jurisdiction, as is the case here with the possible exception of Coles. By fraudulently seizing a jurisdiction they very well knew they did not possess, our 7 State Judges disrobed themselves, lost all their judicial immunity and have left no more rights than any other lawyer or citizen. Appellant has never found a case deciding or even discussing whether a disrobed judge is entitled to special treatment beyond that of any other citizen. And apparently the U.S. Attorney has not been able to find one, else he would have it on display. Four of these 9 cases are discussed and discarded in paragraphs 9 to 14 in the MOTION TO QUASH of which this Court has triplicate copies. These 4 are Robinson, Nelson, Philbrook & Andreu Ribas. Of the 9 cases, 7 of them gave the attorneys brief periods of suspension ranging from 60 days to 3 years, and only 2 were disbarred. One was Meeker which had some points in common with the instant case, but he declined to present any evidence of his charges, withdrew his federal complaint against the State Judges, and tried to resign as attorney before the judgment of disbarment and was only prevented from so doing by the refusal of the Court to accept it. So the facts do not help a decision in this case. The other disbarment was

of Mains after charging in an affidavit and letters that a judge had accepted bribes and maliciously plotted with the opposing attorney to have him arrested to get control of his witnesses; and after Mains was placed under arrest and bonded for $10,000. for perjury and then a bond of $20,000 for attempt to abduct and murder the opposing attorney and could not prove any of his charges, he made a pathetic appeal for mercy because of his wife and boys. Snow got 60 days suspension for accusing a judge of trading his judicial influence for a portion of the prospective fruits from vexatious and groundless litigation he said was incited by the judge. That case has a quotation on page 745 which is a masterpiece beginning "We do not claim,etc".

Two weeks ago, on November 6, the U.S.Supreme Court gave fresh light on its Garrison & N.Y.Times decisions in their case No.467, Beckley Newspapers Corp.vs.Hanks, reported in 36 Law Week 3188, when it reversed a jury verdict of $5000.in favor of a court clerk and said:

> "Our examination of the whole record satisfies us that 'the proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands.' We put aside the question whether the proofs show that the allegedly libelous statements were false. If false, respondent did not and does not contend that petitioner published the statements with knowledge of their falsity."

In addition to the requests contained in the CONCLUSION on page 21 of the brief, appellant respectfully requests a ruling of this Court as to whether the Federal Rules of Civil Procedure govern Disciplinary Proceedings, and if not, what rules do govern.

Respectfully submitted,

(Signed) Loring J. Whiteside
Appellant, pro se.

Nov.22,1967

NOTE-Because this oral argument is virtually a reply brief with numerous references, it was written in advance of the hearing and copies given to each of the 3 Judges and to the U.S.Attorney. Loring J. Whiteside